IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: J U D G M E N T :

S.B. Civil First Appeal No.82/1987.
(Sultan Vs. Raghunath Prasad)

DATE OF ORDER : July 9th, 2007

P R E S E N T

Hon'ble Mr. Justice Gopal Krishan Vyas

Mr. S.G. Ojha for the appellant.
Mr. Narendra Singh/Mr. Sajjan Singh for respondent.

BY THE COURT :

By this appeal under Section 96 of the Civil Procedure Code, the appellant Sultan s/o Moman Ram has challenged the judgment and decree dated 22.08.1986passed by the learned Addl. District Judge, Nohar in Civil Original Case No.26/80, whereby the learned trial Judge decreed the suit in favour of the plaintiff-respondent Raghunath Prasad and direction was issued to the appellant to execute the sale-deed in favour of the plaintiff in respect of sale of agriculture land situated in khasra No.133 at

Rohi Moja Rasampura, Tehsil Nohar and the defendant-appellant was directed to pay the remaining amount of Rs.2,265/-, said to be payable under the agreement arrived at in between the parties on 23.06.1976.

According to facts, it is inter alia stated that a document was executed on 23.06.1975 and, in terms of the said document being agreement to sale, the sale was to be executed by 23.06.1977. According to the agreement in between the defendant-appellant and plaintiff-respondent, the land measuring 37 bigha 11 biswa, khasra No.133 situated in Rohi Moja Rasampura (Tehsil Nohar) was agreed to be sold and, at the time of execution of the document Ex.-P/1, Rs.9,000/- were paid and the remaining amount was agreed to be paid at the time of registry and, as per agreement, the cost of land was agreed at the rate of Rs.300 per bigha and the total sale price was in the sum of Rs.11,265/- out of which Rs.9,000/- were paid at the time of execution of document Ex.-P/1.

The suit was filed by the plaintiff purchaser under the Specific Performance Act in the Court of Addl. District Judge No.1, Hanumangarh on 02.07.1979. Upon notice, the defendant filed his written-statement and, thereafter, on the pleadings of the parties, the following seven issues were framed by the trial

Court :

"(1) आया प्रतिवादी ने खसरा नं० 133 मौजा रासमपुरा की 35 बिघा 11 बिस्वा खातेदारी भूमि 300/- प्रतिबिघा के हिसाब से वादी को बय करने का मुहायदा करके दिनांक 23-6-75 को वादी से नौ हजार रूपये साईपेटे वसूल कर इस अमर का इकरारनामा वादी के हक में तहरीर व तकमील किया कि दिनांक 23-6-77 तक विक्रय मूल्य की बकाया राशि 2265/- रू.वसूल पाकर भूमि का बयनामा वादी या उस द्वारा बताये किसी भी व्यक्ति के हक में तसदीक रजिस्टर्ड करा दूँगा ?

(2)आया वादी बकाया विक्रय राशि 2265/- रू. अदा करके बयनामे की शर्तों के मुताबिक वादग्रस्त भूमि का बयनामा तस्दीक करवाने के लिए सदैव तत्पर व रजामन्द रहा है और अभी भी ऐसा करने को तैयार है ?

(3)आया वादी ने प्रतिवादी को नौ हजार रूपये साई पेटे अदा नहीं किये और पुराने हिसाब के सम्बन्ध में इकरारनामा मनात दावा रूपयों की अदायगी सुनिश्चित करने हेतू लिखा गया था और भूमि विक्रय का कोई सौदा नहीं हुआ ?

(4)आया विवादित बयनामा रजिस्टर्ड न होने के कारण साक्ष्य में ग्राह्य नहीं है ?

(5) आया विनिर्दिष्ट पालना की डिग्री पारित करने से प्रतिवादी को अत्यधिक कठिनाई होगी और यदि ऐसा है तो इसका वाद पर क्या असर है ?

(6)आया दावा वादी देरी से पेश किया गया है और यदि ऐसा है तो इसका दावे पर क्या असर है ?

(7) सहायता ।"

After recording evidence of P.W.-1 Raghunath Prasad, plaintiff and P.W.-2 Chhaganlal and, on the side of the defence, D.W.-1 Sultan and taking into consideration the documents exhibited at the trial agreement Ex.-P/1 produced on record by the plaintiff and documents Ex.-A/1 and A/2, Pro-note and agreement, Ex.-A/3 to A/5, bills produced by the defendant, the

suit was finally decided and decreed in favour of the plaintiff-purchaser.

Learned counsel for the appellant vehemently argued that the judgment and decree passed by the learned trial Court is erroneous and against the record because, first of all, it is contended that the plaintiff-respondent has failed to produce books of accounts to establish that under the alleged deed the the amount was paid to the appellant, therefore, due to non-production of the books of accounts it suggests against the plaintiff respondent and an adverse inference was required to be drawn against the plaintiff. It is contended by learned counsel for the appellant that this is settled law that it is open to the defendant-appellant to show by evidence that though the document was executed in the form of agreement to sale but the real nature of the document was security for re-payment of the amount of loan and, therefore, the entire circumstances have not been considered properly by which the defendant tried to establish that the transaction was not for sale of land and it only covered re-payment of old dues against the defendant. Further, it is submitted that production of accounts of cloth transaction and Promissory Note and an agreement executed in favour of the son-in-law of the brother of the plaintiff-respondent clearly

4establish that the parties were not intending in writing Ex.-P/1 and, therefore, there was no contract of sale in between plaintiff-respondent and defendant-appellant.

It is further submitted that the plaintiff-respondent was in dominating position as appellant being a poor farmer was not in a position to settle the old account and his land had been with the brother of the plaintiff-respondent for two years in lieu of loan of Rs.7,500/- and the plaintiff-respondent was only believing to release the land under some security and under these circumstances the defendant-appellant agreed to execute the sale-deed which is obvious from the evidence on record whereby the defendant agreed that the agreement to sale may be written. In these circumstances, the said document which is bone of the claim staked by the plaintiff-respondent was executed under pressure and without any free will.

It is further submitted that the agreement provided for a penalty for non-execution of the sale-deed and even the plaintiff in his plaint asked for the refund of the amount due. It is argued that the presumption under Section 10 of the Specific Relief Act would not be of any consequence in the circumstances as the plaintiff himself will be satisfied as the amount is paid to him and, therefore, it was not necessary for the learned trial Court to

have decreed the suit for specific performance.

It is contended by learned counsel for the appellant that the price consideration is not only highly inadequate but the figures only tally with the account submitted by the defendant-appellant at the time of execution of Ex.-P/1 as the market rate of the land was more than one thousand ruppees per bigha whereas Rs.300/- per bigha is the sale price agreed in document Ex.-P/1. Therefore, according to the learned counsel for the appellant, in the aforesaid circumstances it is clear that under pressure the said document was executed. It is further argued that from 1976 to 1979 the plaintiff did nothing to get the sale-deed executed; and, after delay, the suit was filed on the ground that the plaintiff-respondent is ready and willing to perform his part of the contract but there is nothing on the record to suggest that the plaintiff-respondent ever did any act in furtherance of his part of the contract. It is prayed that the judgment and decree under challenge may be set aside.

On the other hand, learned counsel for the respondent submits that the learned trial Court has rightly passed the judgment and decree in his favour because it is nowhere disputed by the defendant-appellant that document Ex.-P/1 was not executed by him. Moreover, it is admitted even in this

appeal that the suit agreement was executed by him; but, later on, due to price-escalation of the lands, the defendant refused to execute the sale-deed in pursuance of agreement Ex.-P/1. It is further argued by learned counsel for the respondent that the respondent is ready and willing to perform his part of the contract inasmuch as he has already paid an amount of Rs.9,000/- out of the total sale price amount of Rs.11,265/- which was agreed upon as sale consideration for the land in question on the basis of the prevailing price of land at that time. It is contended that even according to para 7 of the memo of appeal, it is clear that the appellant does not dispute the agreement Ex.-P/1 and has raised the contention that the price consideration is highly inadequate; meaning thereby, the payment of Rs.9,000/- as per Ex.-P/1 is admitted by the appellant and defence has been taken by the appellant that payment of money to the plaintiff would be more equitable relief than specific performance of the contract which was not accepted even by the trial Court. It is, therefore, argued by learned counsel for the respondent that there is no occasion for interference with the impugned judgment and decree.

It is further submitted by learned counsel for the respondent that the stay order granted by this Court on

26.08.1987 was also vacated by this Court vide order dated 12.08.1988 because the appellant did not press the stay application and the same was accordingly dismissed.

I have considered the rival submissions and perused the impugned judgment. I have also carefully gone through the record of the case.

The learned trial Court decided issue No.1 in favour of the plaintiff-respondent whereby it is held that agreement to sale was executed by the appellant in favour of the plaintiff-respondent. Execution of the agreement is not disputed by the appellant nor it is denied by the appellant that he received Rs.9,000/- under agreement Ex.-P/1. However, before the trial Court the appellant took the plea that the agreement was in fact meant for security covering old loan dues.

Though burden lay on the plaintiff to prove the suit document, however, as is evident from the statement of the defendant recorded before the trial Court, the defendant did not deny execution of the agreement nor did the defendant dispute the amount of Rs.9,000/- having been received by him under the agreement. Besides himself, the plaintiff also examined witness P.W.-2 Chhagan Lal who stated that the document Ex.-P/1 was written down by him and further attested the contents of the

document. Once the defendant admitted execution of the suit document, the mere defence that the document, in fact, was meant as security to cover old dues cannot be acceptable unless supported by evidence on record. The learned trial Court after considering the statement of D.W.-1 Sultan as well as statements of P.W.-1 Raghunath Prasad and P.W.-2 Chhagan Lal arrived at the finding that according to evidence this plea cannot be accepted because perusal of document Ex.-P/1 only reveals that the document is agreement to sale in respect of land measuring 37 bigha 11 biswa at the rate of Rs.300/- per bigha. There is no other document or evidence on record even to suggest that the agreement was executed by way of security covering any old loan dues. In his cross-examination, the defendant admitted that he agreed to write down the sale in favour of the plaintiff and admitted his signature on the document. He further admitted that the neighbourhood mentioned in the document was mentioned at his instance.

However, while denying the claim of the plaintiff the defendant has put up the plea that the document, in fact, purported to reassure security of the old loan dues and there was no intention between the parties to enter into any transaction for the sale of land. Strangely enough, while taking

the said defence, the defendant has not adduced any evidence to gather any suggestion that the suit document was in fact written down with ulterior motive to secure old loan dues. Since the defendant failed to show by evidence that the suit document was only intended to secure the old loan dues and the plaintiff proved the document by evidence, it is settled legal position that without reasonable cause for doubt a document cannot be read otherwise than what it is. In his cross-examination, P.W.-2 Chhagan Lal, scribe of the document Ex.-P/1, categorically denied that the amount of Rs.9,000/- was of some old dues and he further stated that defendant did not say any such thing. In the circumstances, no other inference can be drawn except the terms and conditions mentioned in the agreement Ex.-P/1. Therefore, the finding of the trial Court on issues No.1 and 3 does not require to be interfered with.

Issue No.4 was not pressed by the defendant appellant before the trial Court and upon consideration of the statement of D.W.-1 Sultan, defendant-appellant, the trial Court decided issue No.5 in favour of the plaintiff-respondent and passed the impugned judgment and decree.

So far as issue No.6 with regard to delay in filing the suit is concerned, the conclusion of the trial Court does not require to

be interfered with because the trial Court decided this issue in favour of the plaintiff-respondent in the light of principle laid down by this Court in the judgments reported in **1974 RLW 383** and **1982 RLW 256**. The ratio decided in those cases holds good and does not warrant examination. In my opinion, there is no error in the impugned judgment.

Consequently, the appeal is hereby dismissed.

(Gopal Krishan Vyas) J.